

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
August 20, 2009**

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Schlum called the meeting to order at 6:30 p.m.

* **INVOCATION** – Susan Powers, a member of the Baha'i Faith Community Church

* **ROLL CALL**

Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum, Councilmember Contino, Councilmember Leger, Councilmember Brown, Councilmember Hansen, Vice Mayor Archambault and Councilmember Dickey. Town Manager Rick Davis, Deputy Town Manager Julie Ghatti, Town Attorney Andrew McGuire and Town Clerk Bev Bender were also present.

* **MAYOR'S REPORT**

Mayor Schlum read a proclamation declaring September 17th, 2009 "Constitution Commemoration Day" in the Town of Fountain Hills.

* **SCHEDULED PUBLIC APPEARANCES**

(i) Financial update for the Fiscal Year ended June 30, 2009 by Deputy Town Manager Julie Ghatti

Deputy Town Manager Julie Ghatti addressed the Council relative to this agenda item and highlighted a brief PowerPoint presentation relative to this issue (a complete copy on file in the office of the Town Clerk). She stated that although FY 2008-9 ended with a positive fund balance, it was a year of economic challenges and advised that the thanks were due in part to the leadership and cooperation of the Council and staff as they were able to make decisions early on that helped them achieve this goal. She emphasized that the road ahead was still uncertain.

Ms. Ghatti reported that as of the end of the year, the General Fund had an ending fund balance of \$100,000 and per Council policy, that \$100,000 would be transferred to the Capital Projects Fund where it would be available for future appropriation. She added that there was a balance left over in the Streets Fund of \$200,000; in the Downtown Economic Fund there was a balance of \$1 million and as far as Development Fees, they had one minor project and took in \$100,000 and spent \$100,000 so the fund balance remains unchanged at \$2.3 million. She stated that the status was similar with the debt service, which was the property tax and the Municipal Property Corporation and reported that the revenues that came in went out for the debt service leaving a fund balance of \$1.2 million. She further stated that the Capital Projects Fund revenues were \$1.4 million and explained that those revenues came from construction sales taxes, which were still coming in from projects that were started (received building permits) a year or two ago. She said that the number would begin to taper off but the current ending fund balance in the Capital Projects Fund was \$10.4 million.

Ms. Ghatti advised that in the General Fund, the Town's revenues compared to last Fiscal Year were down \$1.7 million and compared to what was actually budgeted they were down \$1.1 million. She said that accordingly, expenditures had to be cut the same and referred to a slide that showed how the local economy was doing. She added that the local economy was driven a great deal by construction activity, which was still "bumping along the bottom." She reported that major revenues for the General Fund were all down with the exception of State

Income Tax and because there was a lag between when the State collects the income tax and distributes it (a two-year lag) and said that as a result the next two years would be down significantly.

Ms. Ghetti discussed expenditures and explained that they had to meet the revenues and if they did not have the revenues they had to cut expenditures and they were actually under budget by \$1.3 million. She commented on local sales tax collections and said that two major portions of local sales tax were from construction activity and retail and pointed out that the construction activity increased more than what they budgeted because of the lag time and discussed challenges associated with budgeting construction sales tax that would come in from building permits. She stated that although building permits were way down, they were still collecting the construction sales taxes (they actually took in 170% of what they budgeted). Ms. Ghetti informed the Council that the retail activity was up approximately 8% over the budget.

In summary, Ms. Ghetti advised that staff continued to monitor revenues to ensure that no expenditures were authorized without adequate resources to pay for them and said that mid-year adjustments to the budget might have to be made if revenues continued to decline. Ms. Ghetti thanked the Council for the opportunity to address them and indicated her willingness to respond to questions. Mayor Schlum thanked Ms. Ghetti for her presentation.

Councilmember Dickey commented on the fact that the residential permit activity ended in January 2009 and asked Ms. Ghetti if she had any idea what happened during the period between January and now. Ms. Ghetti apologized and clarified that the labels at the bottom of the slide were incorrect but the chart was correct (they had two building permits in the month ending June 2009). Councilmember Dickey referenced an article in the paper about cities recently that talked about percentages looking at June sales tax in 2008 compared to June sales tax in 2009 and they were fairly big cities. She reported that the figures ranged from 9% less to 22% less. She noted that the Town's were down about 9% and asked whether that was a valid comparison.

Ms. Ghetti responded that it was difficult to say without looking at where the data came from because this was done from year to year (a full year of last Fiscal Year and a full year of the prior Fiscal Year) and explained that it was not taking the month of June 2008 to the month of June 2009 - it was the whole Fiscal Year. Councilmember Dickey said that she thought it would be difficult to make that kind of a comparison but if it was at all statistically valid at least they were on the lower end of what she thought had been happening to some of the other cities.

Councilmember Dickey discussed budgeting for next year and said that they had gotten the State budget that was sent to the Governor today (9 bills) and two of them affect cities and towns pretty significantly. She stated that construction sales taxes could be affected as well as impact fees and the VLT (Vehicle License Tax) shift was now back. She advised that they were not going back to the floor until Tuesday and stressed the importance of the Governor taking some action. She said that she was hoping that at some point the Council could get some numbers relative to how this would affect the Town of Fountain Hills because some of the other cities had come forward and given some idea of the anticipated impacts. She stated that some information would help them plan for a number of the more immediate expenditures they were anticipating.

Ms. Ghetti replied that the VLT would have an approximate \$75,000 impact on the Town (they would have to find the monies somewhere in the General Fund or make cuts).

Councilmember Leger also discussed possible loss of income as they moved forward and said that Ms. Ghetti had advised that income tax revenues would be down next year. He added that he knew that they got those numbers sometimes in advance and asked if staff had a sense of what those numbers were going to be at this time.

Ms. Ghetti stated that she believed they budgeted \$300,000 less in 2009-10 based on information provided by the State.

Mayor Schlum commented on the fact that that was lagging and that was why this year's income tax was actually higher than prior years. He added that they would expect next year to be lower and then perhaps even lower again the following year. Mayor Schlum thanked Ms. Ghetti for her presentation.

CALL TO THE PUBLIC

Town Clerk Bev Bender advised that one citizen wished to address the Council.

Richard Kloster addressed the Council and advised that he wanted to bring three issues to the Council's attention. He said that the first would be to compliment Town staff and Julie Ghetti in particular for achieving "on budget" expenditures ending in June. He added that he had a question related to the budget and stated that the news about the lawsuit was very disturbing. He said that the Council had probably seen The Times article by now and how many people had commented about changing the attitude and being more negotiable. He advised that he did not know all of the details but after reading some of the articles he was disappointed too because he did not know where that money came from (a half a million dollar refund in taxes that were apparently paid) on the last one but he was fully aware of the fact that before any lawsuit was initiated on the recommendation of Town Attorney Andrew McGuire and Town Manager Rick Davis, the Council makes the decision on whether to proceed or not.

Mr. Kloster stated that the second item he wanted to bring up involves the fact that "we" have heard that the Town was going to move ahead and enter into a trash recycling contract for all of Fountain Hills including gated communities. He noted that he represented Eagle Mountain as well as an HOA coalition of gated communities and advised that they were very concerned. He said that the Town signed a contract with the Sheriff's Office to conduct routine patrols, etc. on all of the streets but noted that there was a specific exclusion for gated communities. He added that when it came to trash and recycle he believed that the direction was to include those gated communities. He expressed the opinion that there were two standards -- one for protection but when it comes to something like trash and recycle, "never mind, the gated communities were going to have to toe the mark." He said that he had talked about this issue before and the Eagle Mountain community had a contract with Allied Waste for roughly \$11.00 and the Town was looking at a cost that would be double that amount. He added that he was still unclear as to how billing would be done but he was sure the Council would address that.

Mr. Kloster advised that since he was out of time he would end his comments at this point and thanked the Council for listening to his remarks and added that he hoped to hear from them.

Mayor Schlum stated that he would "reach out to Mr. Kloster" and noted that some of the data he had was incorrect.

CONSENT AGENDA

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM AUGUST 6, 2009.

AGENDA ITEM #2 - CONSIDERATION FOR APPROVING RESOLUTION 20009-30, ABANDONING WHATEVER RIGHT, TITLE OR INTEREST THE TOWN HAS IN PORTIONS OF THE CERTAIN PUBLIC UTILITY AND DRAINAGE EASEMENTS LOCATED AT THE NORTHWESTERLY PROPERTY LINE OF PLAT 428, BLOCK 2, LOT 83 (16406 E. BRADFORD DRIVE) AS RECORDED IN BOOK 155 OF MAPS, PAGE 19, RECORDS OF MARICOPA COUNTY, ARZONA. EA09-05 (GUSMANO).

AGENDA ITEM #3 - CONSIDERATION FOR APPROVING RESOLUTION 2009-32, ABANDONING WHATEVER RIGHT, TITLE OR INTEREST THE TOWN HAS IN PORTIONS OF THE CERTAIN PUBLIC UTILITY AND DRAINAGE EASEMENTS LOCATED AT THE NORTHERLY AND EASTERLY PROPERTY LINES OF PLAT 204, BLOCK 9, LOT 9 (11059 N. VALLEY DRIVE) AS

RECORDED IN BOOK 142 OF MAPS, PAGE 10, RECORDS OF MARICOPA COUNTY, ARIZONA. EA09-06 (NAGLE).

AGENDA ITEM #4 - CONSIDERATION OF APPROVING A FINAL PLAT FOR A LOT DIVISION AT 16206 E. SAWIK CIRCLE, AKA PLAT 203, BLOCK 9, LOT 2. (APN 176-03-281) CASE #S2009-02.

AGENDA ITEM #5 - CONSIDERATION OF APPROVING AN EXTENSION OF PREMISE APPLICATION, SUBMITTED BY JOHN VINCENT GIGER (FOUNTINI'S BAR AND GRILL) LOCATED AT 13407 N. LA MONTANA DRIVE, FOUNTAIN HILLS, AZ.

AGENDA ITEM #6 - CONSIDERATION OF APPROVING THE ACQUISITION OF CONTROL AND AGENT CHANGE LIQUOR LICENSE APPLICATION TO SHEILA OVERALL, FOR THE HOLIDAY INN LOCATED AT 12800 N. SAGUARO BOULEVARD, FOUNTAIN HILLS, AZ.

AGENDA ITEM #7 - CONSIDERATION OF APPROVING A LIQUOR LICENSE APPLICATION SUBMITTED BY YOUN HWA LEAVITT (KATANA SUSHI & GRILL), LOCATED AT 16425 E. PALISADES BLVD., #103, FOUNTAIN HILLS, AZ. THIS IS FOR A SERIES 12 LICENSE (RESTAURANT).

AGENDA ITEM #8 - CONSIDERATION OF APPROVING A SPECIAL EVENT LIQUOR LICENSE APPLICATION SUBMITTED BY JEROLD LANE MILES (FOUNTAIN HILLS & LOWER VERDE VALLEY MUSEUM AND HISTORICAL SOCIETY) FOR THE PURPOSE OF A FUNDRAISING EVENT, LOCATED AT 13001 N. LA MONTANA, FOUNTAIN HILLS, AZ, THAT IS SCHEDULED TO BE HELD ON SEPTEMBER 16, 2009 FROM 6:00 P.M. TO 10:00 P.M.

AGENDA ITEM #9 –CONSIDERATION OF APPROVING RESOLUTION 2009-33, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE “2009 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS.”

AGENDA ITEM #10 – CONSIDERATION OF APPROVING ORDINANCE 09-10, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING THE “2009 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS” BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

Councilmember Hansen **MOVED** to approve the Consent Agenda as listed and Vice Mayor Archambault **SECONDED** the motion. A roll call vote was taken with the following results:

Councilmember Dickey	Aye
Mayor Schlum	Aye
Councilmember Leger	Aye
Councilmember Hansen	Aye
Councilmember Contino	Aye
Councilmember Brown	Aye
Vice Mayor Archambault	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

REGULAR AGENDA

AGENDA ITEM #11 – CONSIDERATION OF SPECIAL EVENTS BEING COORDINATED BY THE TOWN OF FOUNTAIN HILLS PARKS AND RECREATION DEPARTMENT: THE MOVIE IN THE

PARK (SEPTEMBER 12, 2009); BALLET UNDER THE STARS (SEPTEMBER 24, 2009); THE HOMECOMING PARADE (SEPTEMBER 30, 2009) AND THE HOMECOMING TAILGATE PARTY (OCTOBER 2, 2009). SAGUARO BOULEVARD WILL BE CLOSED FROM AVENUE OF THE FOUNTAINS TO PALISADES BOULEVARD FROM 5:00 P.M. – 9:00 P.M. FOR THE MOVIE IN THE PARK AND THE BALLET UNDER THE STARS EVENTS. SECTIONS OF AVENUE OF THE FOUNTAINS AND PAUL NORDIN PARKWAY WILL BE CLOSED FROM 3:30 P.M. TO 7:00 P.M. FOR THE HOMECOMING PARADE.

Mayor Schlum advised that presentations on Agenda Items 11, 12 and 13 would be heard all at once.

Recreation Supervisor Bryan Hughes addressed the Council relative to the three agenda items and advised that the Council would be voting on a number of events. He reviewed the different events and expressed appreciation to everyone involved for their efforts. He noted that the Ballet Under the Stars would be starting at 7:00 p.m. rather than the previously advertised time of 7:30 p.m. He noted that Fountain Hills would host the first of Ballet Arizona's four free performances this year. He invited Mayor Schlum and members of the Council to be present for the ceremonial "tapping of the keg" at the Oktoberfest event and noted that this was the result of the efforts of four different groups (Town of Fountain Hills, the Southwest German Society, Sons of AMVETS and Elks Lodge #2846). He advised that this was the second year of the reorganized celebration at Fountain Park. He noted that Oktoberfest was a family event and highlighted a number of the youth related activities that would be offered. He said that non-stop authentic German music would be played at the celebration as well as another band and discussed the authentic German foods/beverage that would be available. He advised that proceeds from the event would benefit the presenting organizations and their charities.

Mr. Hughes advised that the Homecoming Parade would take place on Thursday, September 30th from 5:30 p.m. to 6:30 p.m. on Avenue of the Fountains and the Homecoming Tailgate Party would be held on Friday, October 2nd from 5:30 p.m. to 7:30 p.m. at Golden Eagle Park followed by the game. He advised that admission was free for all events and they supported the Town Council's goal to "maintain and promote our small Town character by enhancing public/private collaboration to develop new and improve existing special events."

Mr. Hughes encouraged everyone to attend these fun events and indicated his willingness to respond to questions from the Council. Mayor Schlum thanked Mr. Hughes for his presentation.

Ms. Bender advised that there were no citizens wishing to speak on these three agenda items. Mayor Schlum questioned if all three items could be considered in one motion to which, Mr. McGuire responded yes.

Councilmember Hansen **MOVED** to approve the Special Events as outlined (Movie in the Park, Ballet Under the Stars, the Homecoming Parade, the Homecoming Tailgate Party and the Oktoberfest events) and Councilmember Dickey **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

Mayor Schlum thanked everyone involved for their efforts and support.

AGENDA ITEM #12 - CONSIDERATION OF A SPECIAL EVENT APPLICATION FOR THE OKTOBERFEST PRESENTED BY THE TOWN OF FOUNTAIN HILLS, SOUTHWEST GERMAN SOCIETY, SONS OF AMVETS, AND THE FOUNTAIN HILLS ELKS LODGE #2846 TO BE HELD IN FOUNTAIN PARK ON SEPTEMBER 25-26, 2009, AND would REQUIRE CLOSURE OF SAGUARO BOULEVARD NORTH OF AVENUE OF THE FOUNTAINS TO PALISADES BOULEVARD FROM 3-11 P.M. EACH DAY.

See discussion and action under Agenda Item #11.

AGENDA ITEM #13 – CONSIDERATION OF A SPECIAL EVENT LIQUOR LICENSE APPLICATION SUBMITTED BY SAMUEL COFFEE (SONS OF AMVETS) FOR THE

OKTOBERFEST EVENT TO BE HELD IN FOUNTAIN PARK ON SEPTEMBER 25 AND 26, 2009 FROM 5-10 P.M. EACH DAY.

See discussion and action under Agenda Item #11.

AGENDA ITEM #14 - CONSIDERATION OF RESOLUTION 2009-25, AN INTERGOVERNMENTAL AGREEMENT WITH VALLEY METRO REGIONAL PUBLIC TRANSPORTATION AUTHORITY TO PROVIDE SPECIAL TRANSPORTATION SERVICES TO THE TOWN OF FOUNTAIN HILLS, NOT TO EXCEED \$70,500 FOR THE PERIOD FROM JULY 1, 2009 TO JUNE 30, 2010.

Human Resources Director Joan McIntosh addressed the Council relative to this agenda item and stated that earlier this year Maricopa County notified the Town that they were going to discontinue their Special Transportation Services (STS) for Fountain Hills' residents effective June 30, 2009. She said that at that time Council directed staff to research their alternatives and see if they could find other programs with the goal in mind to provide uninterrupted service to the residents who currently utilized the STS Program.

Ms. McIntosh reviewed information contained in the staff report and advised that staff had conducted research and found that the Regional Public Transportation Authority (RPTA) was going to make available a program that was very similar to the STS Program and call it Total Transit. She noted, however, that since the Town received very late notice of the termination from Maricopa County's program, staff was not able to get an Intergovernmental Agreement (IGA) written and approved prior to the July 1, 2009 date and so they had been operating under a Memorandum of Understanding (MOU) since that date with Valley Metro.

Ms. McIntosh informed the Council that the IGA had been completed and the Council had received copies this morning. She said that if approved this evening, the IGA would continue through June 30, 2010, and could not exceed a cost of \$70,500 for the Fiscal Year. She noted that the figure includes the 5% administrative fee that RPTA would charge. She reported that Valley Metro's board meeting was scheduled for September 17th and if the IGA was approved by the Council this evening, they would discuss the issue at that meeting and approve it on their end. She further stated that she was happy to report that they continued to have the same number of riders with the Total Transit Program as they had with the STS Program and advised that Heather Ware had worked diligently with Valley Metro to iron out all of the glitches with which they started. She said that she had been receiving a lot of compliments from riders and their families regarding how helpful and friendly the drivers and the dispatch service were. She stated that the residents were very grateful to the Council for providing this service.

Ms. McIntosh informed the Council that residents who did not have special needs were being helped through the Give A Lift Program that Heather was running and reported that that had turned out to be very successful to date. She said that Heather currently had 23 volunteer drivers who were giving lifts to 40+ riders and 41 rides had been provided within the last six weeks. She added that drivers and riders were forming fast friendships. Ms. McIntosh indicated her willingness to respond to questions from the Council. Mayor Schlum thanked Ms. McIntosh for her presentation.

Councilmember Leger said that when the program was first proposed there were a limited number of people enrolled and looking at the contract it was for a certain amount of people. He asked if there was any flexibility as far as adding people or whether they were fixed at the ten.

Ms. McIntosh replied that at this point they were fixed at the ten but if one should drop out then they could add another rider as long as there was money in the budget. She added that the IGA stated that they could not go over the \$70,500 so if more were added, they would be over budget.

Councilmember Dickey commented on rebates and said that it was possible that they could receive a total of \$21,000. She questioned whether those monies could be used towards this. She said that it was a reimbursement of some kind (\$14,000 for 2008-09 and possibly another \$7,000 for 2009-10).

Ms. Ghetti said that that was through the RPTA and it was in fact a reimbursement (\$7,000 per year). She added that they were able to go back and retroactively apply for Fiscal Year 2007-08 and then 2008-09 and 2009-10. She confirmed that the monies could be used for this purpose.

Ms. Bender advised that there were no citizens wishing to speak on this agenda item.

Councilmember Dickey **MOVED** to approve Resolution 2009-25, an Intergovernmental Agreement with the Valley Metro Regional Public Transportation Authority to provide Special Transportation Services to citizens of the Town of Fountain Hills not to exceed \$70,500 from July 1, 2009, through June 30, 2010, and Councilmember Leger **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #15 - CONSIDERATION OF RESOLUTION 2009-31, APPROVING AN INTERGOVERNMENTAL AGREEMENT AMONG ARIZONA MUNICIPALITIES AND THE LEAGUE OF ARIZONA CITIES AND TOWNS TO ESTABLISH A DATABASE FOR SHARING THE RESULTS OF E-VERIFY AUDITS.

Town Attorney Andrew McGuire addressed the Council relative to this agenda item. He said that a while back the Legislature had imposed a new provision relating to verifying the legal status of workers through the E-Verify Program for anybody who provided services to a community in the State. He clarified that it applies to the State and every city and town within the State. He advised that in complying with that provision, it occurred to staff that a number of cities and towns were going to be duplicating the people they were going to be auditing and in an effort to try and not have the same company audited by seven different cities or towns during the course of a year or whatever period of time they were using, he had circulated the idea around the City Attorney's Association that they use a common database so that everybody knew who had been audited. He explained that if a municipality was going to do an audit, they could check the database first and then go to the source city or town that performed the audit and review their audit materials and find out what had been done. He said that this would help ensure that they were not harassing the same businesses over and over again.

Mr. McGuire advised that they had come up with the concept of the League serving as the clearing house for this and explained that the proposed IGA was an agreement whereby the League would hold the results of the audits only -- a memorandum of what had been audited (the company, the findings, etc.). He emphasized that there would not be any personal information in the database and said that it was an opt-in program. He noted that the intent was to start it up in the near future and see how it worked. He stated the opinion that it had the potential to be a useful tool because of the different audit strategies by different cities and towns.

Mayor Schlum thanked Mr. McGuire for his presentation.

Vice Mayor Archambault asked whether it was legal to share information across cities and towns and Mr. McGuire responded that the material that the cities and towns would be holding as a result of the E-Verify audits would be public records to the extent that it could be shared. He stated that because they had conducted an audit, everything they have, other than personally identifying information or other things that they were required by law not to disclose, would be a public record.

Mayor Schlum commented on the fact that once other cities determine through the League that an audit had already been performed on a particular company, that city or town would then contact the city or town that had conducted the audit. He asked what information they would be sharing.

Mr. McGuire replied that it depended upon the level of comfort of the municipality; some had indicated that if another municipality had done an audit within the year and they were able to see the results of the audit then that would be satisfactory to them while others had said that they would want to see the background papers and still others had said they would want to see the entire audit (social security numbers and everything else) so that they could run those same numbers themselves. He added that in the event cities and towns wanted to go to that third level and see the personally identifying information that the other was holding, they would just have to work out

an agreement among themselves that the information would not be released. He emphasized that both would be under the same legal obligation not to give that information out so there was no incentive or motivation for anyone to cause any disruption. He said that they were not comfortable having any one of them be the guarantor of another so it was going to have to be between the communities that were working on a particular audit of the same company.

Mayor Schlum stated that that was his concern; ensuring that they did their E-Verify work in accordance with whatever standard was in place.

Mr. McGuire said that was why they left it as open as it was and reported that if Scottsdale, for example, pulled the name of a company and checked the database and the Town had already conducted an audit, they then had the opportunity to decide "that's all well and good but we want to conduct one ourselves" or they would have the opportunity to look at the materials and determine that the audit was done properly and accept it as one of theirs. He commented on the fact that the process was very new and fluid and they were attempting to try to find a way to meet the purpose and intent of the Statute without being over burdensome on businesses.

Vice Mayor Archambault said that if they were to piggyback on a particular contract that another city or town might have, for pavement, etc., they would be able to just go to that city or town and find out if they had already conducted an audit and, after reviewing the results of the audit if we were satisfied with their results, we could then just go along with that audit rather than conduct another.

Mr. McGuire responded that if the other municipality had conducted an audit of that company and it was filed with the League and we were comfortable with the process that was used and the fact that it was current enough, he would not be comfortable with just blindly saying, "they have audited it so we were okay," -- he thought it at least required them to review their full audit and decide for themselves whether it met the standards that they desired.

The Vice Mayor said that that was what he had meant - if the other audit was to the Town's satisfaction, then they would not need to conduct another and Mr. McGuire concurred.

Mr. McGuire informed the Council that they had struggled with how long the audits should be good for and said that one year had been the period of time that most people had been talking about and up to as much as three years. They had asked the League to maintain the database for three years to satisfy the comfort level of different cities and towns.

Councilmember Hansen asked whether the Town had established its procedures and Mr. McGuire advised that they were working with Sales Tax Auditor Al Holler and the E-Verify Auditor to develop procedures. He added that Ms. Ghetti had also been involved.

Mayor Schlum said that he assumed that E-Verify had a standard form that needed to be followed since it was a legislated action that was passed down to them.

Mr. McGuire advised that the Statute was not "crystal clear" on exactly the process that should be followed; only that they were supposed to do it.

There were no citizens wishing to speak on this agenda item. Mayor Schlum thanked Mr. McGuire for his presentation.

Vice Mayor Archambault **MOVED** to approve Resolution 2009-31 and Councilmember Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #16 –CONSIDERATION OF ORDINANCE 09-09, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 7, BUILDINGS AND BUILDING REGULATIONS, ARTICLE 7-10.

DEVELOPMENT FEES, RELATING TO ADJUSTMENTS TO DEVELOPMENT FEES FOR THE TOWN OF FOUNTAIN HILLS.

Deputy Town Manager Julie Ghatti addressed the Council relative to this agenda item and advised that a little over two years ago staff was directed re-evaluate the Town's development fees, which entailed a full blown study of the Capital Improvement Projects and then come back to the Council with a proposal for either an increase or decrease in development fees. She said that the Council was presented with the Capital Improvement Plan or the IIP (Infrastructure Improvement Plan) in September of 2008 and in April staff published a Notice of Intent and held a public hearing on the proposed fees. The Notice of Intent was published in the local newspaper two times (May 6 and 13, 2009) and the Development Fee Report recommendation from Red Oak Consulting was presented to the Council on May 7th. Another public hearing was held on July 2, 2009, and tonight was the proposed adoption of the proposed fees and, if approved, the effective date of the fees would be about mid November 2009.

Ms. Ghatti referred to the schedule of the proposed fees for residential for each fee area, current fees, proposed fees, and the anticipated changes. She noted that the total increase in residential single family was \$4,987 and explained that that was primarily due to the streets fee. She reiterated that the fees were related to the Capital Improvement Plan and the updated Capital Improvement Plan for streets, which was the result of the Stantec study. She added that the increase for multi-family was \$3,877 - again, primarily due to streets.

Ms. Ghatti noted that the increase for non-residential was a total of \$6.16 and for industrial it was \$1.14. She referred to a survey of non-utility development fees among other cities and towns and pointed out that if the fees were approved, the Town would be second to Queen Creek. She discussed the estimated impact of the increases in development fees (what it would mean in additional revenue to the Town over the next five years based on the current fees) and emphasized that the figures were based on a projection of development over the next five years. She advised that the figures on the chart for 2012, 2013, and 2014 assumed that the Ellman Property would start pulling permits and begin development. She stated that the difference between what the current fees were and what the proposed fees were in 2012 was \$678,698 and in 2013 it was \$1,189,866. She said that the difference in five years at the current fee would be \$4.3 million but if the proposed fees were adopted the figure would be \$7.7 million. The difference in five years in revenue was about \$3.4 million and taking that difference out 25 years, it was about \$10 to \$11 million dollars.

Ms. Ghatti also referred to a summary of the Capital Improvement Projects that were included in the IIP and noted that they were the growth related portion of the projects (i.e. in Streets, it was \$26.7 million while the total of the projects for Streets was \$98 million - only the growth portion was used in calculating the Development Fees). She reported that the total projects related to growth was \$60 million over 25 years.

Ms. Ghatti indicated her willingness to respond to questions from the Council. Mayor Schlum thanked Ms. Ghatti for the presentation.

Councilmember Leger referred to current fees versus proposed fees and asked whether the numbers were based primarily on residential.

Ms. Ghatti replied that the figures included residential and commercial and she reiterated that they were estimates. She stated that since commercial was square footage staff just took an estimate of projected growth.

Mayor Schlum commented that this was an important topic for the Council to discuss and that hopefully they would have some good dialogue on this issue.

Vice Mayor Archambault said that the same chart showed that the 25-year difference would be a \$10 to \$11 million difference and asked what the projected total was (is the projected total trying to come up with the \$60 million?).

Ms. Ghetti stated that the \$10 to \$11 million was the total over 25 years and that would be the approximate difference if they had the current fees and there was no increase for 20 to 25 years. She added that that difference, based on the proposed fees, would be about \$11 million.

The Vice Mayor asked whether they were trying to reach the \$60 million (if they were to collect all the fees) and asked how much they would be collecting over the 25 years. He questioned whether they were projecting out to collect the \$60 million that they said they were going to be short (the \$60 million was the impact from growth so they were trying to collect it over 25 years).

Ms. Ghetti explained that the proposed fees were designed to pay for all of those growth related projects over 25 years and added that there were other factors that came into play that had been calculated (i.e. some of it was property tax that was paying for existing projects now so those numbers reduced the amount of money that could be used to calculate the development fees).

Vice Mayor Archambault stated that the current property tax was going to reduce the \$60 million to some extent and what was left was what was calculated and that was what they were trying to collect. He added that by not raising the fees they would be short by \$10-\$11 million in projected revenues. Ms. Ghetti concurred with the Vice Mayor's summation.

Councilmember Dickey said that if they looked at the five year total current, meaning that would be collected, you would say just multiply it by five but not really because she did not think that the actual development fees would be collected because they were going to get built out. She stated that the best case scenario would be to take that (\$25 million or something like that) and if they did have the new fees then it would be something like seven times five. She noted that it was still not \$60 million but that got them closer.

Ms. Ghetti advised that the \$60 million total cost of the projects was based on doing all of the projects in 25 years, whereas the revenue was based on projected construction and development over 25 years. She added that obviously they were not going to develop everything in 25 years. She noted that when she prepared the revenue projection she based it on what they thought development was going to be and when they created the impact fees they based in on the \$60 million being done in 25 years but obviously it was all related to growth. If there was no growth and no building going on, there were no development fees.

Mayor Schlum asked whether next year's Capital Development budget was originally around \$10 million before they started to look at it again (they would be adjusted as needed) and Ms. Ghetti said that the Mayor was correct.

Mayor Schlum stated that on the survey of non-utility development fee communities they were currently a little below half as high as the other municipalities and with the proposed change the Town would be the second highest. He asked if the big change came from how the streets were calculated and the Capital Improvement Plan or just an increase in the anticipated street needs. Ms. Ghetti responded that the increase was actually due to the updated Stantec study that did an evaluation of all of the streets in Town, their current condition and what was necessary to bring those streets over the 70%.

The Mayor said that he would assume that the funding for those would come through a Capital Improvement Plan or impact fees rather than a bond or other means. Ms. Ghetti said that the impact fees would not pay for all of it because they could only be used to pay for the piece that would be related to the growth. She noted that they would have to be subsidized with either a bond, capital improvement money (if there was enough in the fund) or some portion of the Highway User Revenue Fund (HURF).

Vice Mayor Archambault commented that in the Stantec report the money that they used was obviously going to have to be subsidized by either a bond issue that the citizens would have to pay for or something else and logically and methodically they would have to go through it and say "this much would be related to the impact of growth." He added that if they did not have that growth, they would not have to have that expenditure.

Ms. Ghetti somewhat concurred with the Vice Mayor's statement and clarified that the Stantec report took a look at all of the Town's streets and came up with a number. She added that the Development Fee study looked at what the capital improvements budget was, which included improving their streets according to the standards that the Stantec report said. The Development Fee report was based on the Town's CIP -- what they created and the Stantec report just told them that they needed to make sure that they had this much money in the Capital Improvement budget to bring the streets up to a certain level.

Vice Mayor Archambault asked how many cities and towns were looking at reviewing their development fees (of the ones listed on the chart). Ms. Ghetti advised that currently Queen Creek, Mesa, and Carefree had just completed or were in the process of reviewing the fees. She added that the Town of Gilbert did theirs in 2008 and Avondale in 2009.

Vice Mayor Archambault said that streets seemed to be the largest number and for the most part he believed that the Town had done an excellent job maintaining the streets they have. He noted that the average life of a street was 30 years and they had been very fortunate in being able to maintain for 30 years. He added that they were getting on the cusp of having to redo all of their streets (especially the ones that were 30+ years old) and this was what they had been telling the citizens for quite a while. He stated that when they started to think about development such as the Ellman Property and the impact it was going to have on a minor collector street and some of the other streets; it was going to take a group effort to achieve what needed to be done (some development fees, etc.). He said that he believed that the people moving into Town had an impact on the infrastructure and that needed to be paid for. He added that it was also going to take a group effort by the citizens of the Town agreeing to pay for bond issues to repair some of the streets because they could have all the development fees they wanted but if they had streets that were not maintained they were not going to have anyone wanting to move into Town. He said that he did not want to see an unfair burden placed on one particular segment of the community and added that they had to share in it in a global setting.

Mayor Schlum agreed that streets were primarily the one item that jumped up most considerably and stated that was causing nearly a doubling of the development fees in residential and commercial areas.

In response to a question from the Mayor relative to how staff measures their desire to have development downtown sooner than later and increasing development fees for that space, Ms. Ghetti advised that as far as commercial (and she was going out on a limb here because it was a very complex calculation) they actually use an industry standard and measure things like "trip charges." She said that it was not population based or unit based, it was actually based on potential traffic growth and public safety. She added that if a commercial building was a certain size, they took into account what type of business it was going to be and how many trips it would generate because obviously with residential they would not have as many trips as they would with a business.

Ms. Ghetti said that as far as the fees for commercial space she did not have any data right now as to how the Town compared to other municipalities.

Councilmember Hansen commented that when they met on July 2nd they had quite a bit of discussion about Saguaro Boulevard because that was also the night that they discussed the possible bond. She stated that there seemed to be a little confusion regarding growth and maintenance. She said she thought that staff was going to provide additional information on that issue. She noted that on one hand it was considered part of the IIP and would go into the calculation for the development fees but then they were also told it would be considered maintenance and therefore could not be part of that. She also asked if there were other streets that would be more maintenance related than growth related.

Ms. Ghetti replied that Saguaro Boulevard specifically, when the question came up the consultant did not know what the street was, but Saguaro Boulevard, the mill and overlay, was 0% allocated to growth. It was included in the IIP or the Capital Improvement Plan but was not used in the calculation of the development fee. It was excluded because it was not growth; it was maintenance for that one road.

Mayor Schlum asked whether there were any citizens who wished to speak on this item and Town Clerk Bev Bender advised that there were two requests to address the Council.

Ed Kehe addressed the Council and stated that Red Oak Consulting had recommended upward adjustments in the Town's development fee schedule based on projected costs to the Town attributable to new development. He said that 85% of that amount was directed toward the maintenance of Town roads that were already in poor shape. He added that if the Council approved the adjustments, the minimum additional amount over current fees that developers would pay the Town over time to offset the cost of growth was \$10 million. That figure was based on a \$5,000 adjustment for 1,800 approved residential units in Ellman, Eagles Nest and Adero plus remaining infill lots, yielding \$9 million plus a conservative estimate of \$1 million from commercial and industrial activity. Should the Council reject the proposal, growth would still happen, infrastructure would still have to be funded but the \$10 million would come from the collective pockets of existing residents dollar for dollar - not from the developers for whom development fees were a pass through option.

Mr. Kehe discussed the opposition's case and stated that (1) "the proposals were too high; almost double the existing fees." The 2004-06 Council chose to ignore recommendations of experts at that time and arbitrarily set the fees too low and as a result they were in a "make up mode" at the present time and would be further behind if they repeat the same error this evening. With few exceptions, every other municipality imposes such fees. The adjustment would place the Town more in line with where they ought to be. He added opposition (2) "this was the wrong time to raise fees - it gives the wrong message to the business community." Mr. Kehe stated that development fees were not a general tax and there was no evidence that development fees had a negative impact upon economic development. In today's Republic there was an article stating that homebuilders had sold off much of their excess inventory and 10,000 homes had been sold each month in Maricopa County for the past three months. He further discussed opposition (3) "since the Legislature had attached a moratorium on development fees in its proposed budget maybe we should wait." Mr. Kehe noted that the Town's process with development fees had gone on for over a year and the State budget was still up in the air. If the government did not veto and a moratorium becomes a reality, passing this proposal tonight would enable the Town to hit the ground running when the moratorium ends.

Mr. Kehe said that approving this proposal tonight was not a draconian measure; rather, it was thoughtful planning for a stronger fiscal future. He added they were talking about \$10 million dollars that either growth would pay or the residents would have to pay and he urged the Council to do the right thing. Mayor Schlum thanked Mr. Kehe for his comments.

Mark Dohrmann addressed the Council and said he had done business as an architect since moving to the Town 14 years ago. He expressed concerns regarding the increases in the commercial fees and the impact on the downtown area. He stated the opinion that development fees such as these were entirely appropriate for big suburbs where there was a lot of through traffic and you had a large population base. He added that Fountain Hills was a small suburb with very limited through traffic and they simply did not attract the kind of national developers who were willing to pay these kind of fees. He advised that over the last month he had talked with a number of builders, realtors, owners, and other architects and basically everyone wanted to know what would be accomplished and was it really going to encourage people to build here. He stressed the importance of making the downtown area as competitive as possible economically to encourage people to build out the new vision that the consultant had designed. He added the opinion that increasing the development fee would bring development to a dead halt in Town. He urged the Council to vote against this proposal. Mayor Schlum thanked Mr. Dohrmann for his remarks.

In response to a question from Councilmember Leger, Ms. Ghetti advised that she went on to Scottsdale's website to try to find their fee schedule but could not locate it. She added that their fee structure might vary because of different criteria and said that the comparison was prepared by the consultant, not by staff.

Discussion ensued relative to the Town's positioning and moving up to the second highest; the fact that the positioning could change as other municipalities increased fees; the fact that the types of development they were

looking at for the downtown area were more amicable to what you would typically see in the Scottsdale area given the city's close proximity; Councilmember Leger's comment that he had never seen impact fees discourage someone from developing in Scottsdale; and the fact that Arizona, over the last several years, had been one of the largest growing States residentially and commercially regardless of the level of impact fees.

Councilmember Leger stated that he found the amount of the fee interesting and said he had not found any data in researching this issue to show that there was a direct correlation. He noted that developers typically included that into the cost and passed it on to the consumer anyway and at the end of the day they net out a profit that they expected before they made the original investment. He said that he believes, after following this debate over many, many years in this Town, that every time their consultant had come to the table and said, "this was what you need to do to be on track and cover your capital needs," it did not happen. He said he did not expect developers to pay for all the growth but he did expect them to pay their fair share of the associated costs because their developments had an impact on the Town's infrastructure.

Councilmember Leger noted that the last time this dialogue occurred; the fees recommended were relatively higher than they were set and they were arbitrarily set a lot lower. He said that one would think that with arbitrarily low impact fees, the Town's positioning would be very low on the scale and as the chart previously shown proved, this was what happened. He advised that they had not had a boom of commercial or industrial development in Town even when the impact fees were low. He said that a citizen came before them this evening and made it perfectly clear that if they did not go with this particular recommendation, for every penny or dollar they "tweaked" this, they were then disproportionately creating a burden for their citizens. He added that they all knew philosophically that a property tax did not fly very well in this Town. He noted that sales tax had a certain ceiling and the bottom line was that these fees, he believed, were long overdue in terms of an adjustment. He said that when he looked at the percentage increases they caught his attention and they had caught the attention of many in the community including architects and builders but added that they were in a catch up mode and were behind the eight ball. He stated that it was his understanding that the Legislature was looking at a two-year moratorium, which would put them even further behind the eight ball. He pointed out that if they put a moratorium on the Town's current impact fees versus the proposed impact fees, they would take an even larger hit.

Councilmember Dickey said that she appreciated the differences of opinion on this matter and advised that she received one pro letter and one opposed letter so the response had not been overwhelming one way or the other. She referred to an article in the Arizona Republic about the budget and talked about development fees and said she could use it to explain why she would actually be in favor of enacting this at this time. She noted that the article talked about the moratorium and basically was telling lawmakers that cities collect impact fees according to complex formulas that quantify how much it would cost to build streets, police, fire stations, and other critical infrastructure. She said that that was their opinion and she concurred -- they said lose the fees and the entire community pays. That was just bad policy and across the Valley, critical projects such as fire stations would be put on hold in most cities by increasing response times, making communities less desirable for potential investors and knowledgeable workers. She went on to say that some believed that suspending impact fees (or in the Town's case not raising them and keeping them low) would jump start construction and said that was a weak argument. Maybe lower fees would lure some skittish builders into the market but it was doubtful. She said that there was a certain amount of attraction for having low taxes or fees but they were starting to see that other things were valued -- good education obviously, transportation, good air, responsive public safety, roads, etc.

Councilmember Dickey stated the opinion that the community had a lot of value. She added that it was true that the citizens rejected the property tax but added that they did not give current residents the opportunity to vote on the road (to fix Saguaro) and she had faith in the fact that perhaps they would have chosen to approve that issue. She said that the idea of current residents paying their fair share over the years she believed had been in place because in the old days they had the Road District and they were paying for road maintenance at that time and growth until they had some development fees in 2000 or around there so for ten years they paid for that. She added that they had the Fire District so they did have a property tax and they were paying for that as well. She noted that they paid for bonds for the mountains and the area around the Fountain and for the downtown with

the sales tax. (Mayor Schlum added in the Community Center and Town Hall.) Councilmember Dickey advised that there were things that current residents have paid for and at this point, and as Mr. Kehe said and she agreed with him, the fees that were set in 2005 were too low. The Town paid for consultants to conduct studies or direct staff to do them but then they consistently questioned the validity of the results or the qualifications of the people providing them. She added that they had a street report that Stantec developed and they did not like what they heard and so they did not really take action on it so now they were not going to take their advice. She pointed out that they had wonderful volunteers telling them how to address the Town's revenue shortfall and they provided several options and people voted against them so they did not do that either.

Councilmember Dickey commented on the fact that the previous discussion relative to development fees was just what they expected -- that they use accepted methods and we asked straight out "Is this something that the other cities/towns use?" and we were told "yes it is, this was the methodology that was accepted." She said that at that meeting they cut what the consultant was telling them without any expertise or background. She added that that was why they were behind. They had a presentation on the need for a fire station and improving response times and they did not like what they heard so they didn't listen. Councilmember Dickey stated that they must stop wasting energy and resources and asking people for their expertise and then rejecting the results just because they did not like what they hear. She further stated that this did not mean that they blindly accept everything that comes down the pike but they had been talking about this issue for years and have had a lot of opportunities for public input but they really had not had a lot of people up in arms one way or the other about it. She said that at this point she believed there is value in Fountain Hills and people wanted to come here and after seeing the Visioning proposal she believed that people were going to want to come here. Councilmember Dickey said that she was all for doing this now and protecting current residents from bearing more than their fair share of the growth that they hope was going to come.

Councilmember Brown advised that he had a little different viewpoint and said that Ms. Ghetti's report clearly showed that construction was border line non-existence now and depending upon which report they read it was not going to get much better than that in the next five years and maybe longer. He added that they have to also listen to Councilmember Dickey's comments relative to the fact that the State budget was possibly going to stop funding some of the monies that the Town currently receives and that could go on for another ten or fifteen years. He stated the opinion that Fountain Hills was going to have to one day stand up and take some of the responsibility themselves because the State could stop all of their funding and they did not have a stop gap to continue their modus operandi. He added that the development fees were not going to even participate during this recession. He said that he truly believed they did not have all of the information on the table that they needed to come up with the right decision but before he went any further with that he would like to explain to the people who did not understand the way the development fees worked -- a developer buys the ground, develops it, puts a sewer in, and then gives that to the Sanitation District who puts the water in and gives that to Chaparral City Water so they have income coming in (so much per water meter) and it was a money pocket for the utility company and then the developer puts the streets in and then they amortize all of that into the price of the lot and the person who was buying that lot gets to pay their share of the sewer, the water, and the street and everyone of the streets that had been put in over the last eight years were private streets and Fountain Hills did not pay one cent of maintenance on them; they have Homeowners' Associations that collect the dues. He said that it gets much more convoluted in his mind trying to ask a homeowner who had already paid for sewer, water and streets to throw out another \$11,000 or \$12,000 for the privilege of living here when the Town was not trying to help itself.

Councilmember Brown expressed the opinion that if the Town was trying to help itself a little bit he would be "all over" putting the icing on the cake with the amount of monies that were being requested by Red Oak, which had very little human factor in it - they plug the numbers into the computers and "here's what they say." He said that he thought they had missed the human factor and needed to take a lot deeper look at the economy before they stepped up and subjected the builders and developers of this Town -- and he's not saying they should not-- but he was saying they should have a little more information before he would be comfortable voting for this.

Councilmember Brown **MOVED** to continue this item to the first meeting in September, which would give them 30 additional days to assemble more information. Mayor Schlum stated that the next meeting would actually be the second meeting in September which would allow an additional 30 days. Mayor Schlum **SECONDED** the motion.

Mayor Schlum said that this was a tremendously important issue and the Town did not have a lot of development going on and although they had discussed this issue in great detail, more information was always good. Vice Mayor Archambault advised that he could support the motion to continue only on the basis that they gather the information. He noted that there had been a little bit of a quagmire of information (is it \$98 million or \$60 million, maintenance as opposed to impact on the streets, private streets (the impact)? Mayor Schlum expressed the opinion that good dialogue had taken place and each Councilmember would have questions and staff would reply to everybody.

Councilmember Dickey commented that she would prefer not to continue this but one of the things she wanted to mention was that in the budget bill that was on the Governor's desk now, the moratorium date she believes was June 30, 2009 so basically if they had been able to do this in April or May they would not have been under that. She added that since the budget was not finished and there was still give and take going on if a date starts being changed and it ends up being September 1st anybody who adopted the fees before that date would be okay. She said that she wished that they would just address this now.

Councilmember Leger stated that he was always game for more information and analysis and noted that they started this debate a long time ago. He added that it was not the first time they had this debate and expressed the opinion that there were some philosophical differences. He said he did not think they were going to have the answers to all of the questions and pointed out that as the Legislative bill currently read it was the June 30th date and if in fact they went forward and approved the rates or reduced rates, they could not enact them for two years. He stated that he thought there was a high probability that the moratorium, which was a bargaining tool, was going to be in there. He noted that even if they approved these rates or reduced rates there was still that two year window where they were going to remain the same. He stressed the fact that he did not want to place a burden on builders or developers and over his 18 years in Town he had seen growth regardless of the economy. He added that Fountain Hills was an incredible place to live and said that people would build here and buy homes here and eventually develop the commercial property downtown when they had enough roof tops to support some of the larger businesses that were willing to take a risk on the community. He said that as Councilmember Dickey pointed out, there was a chance that the date would slide and it would be very awkward if they missed that opportunity after so much debate had taken place. He further stated that the Council needed to look at the big picture. He added that there were still so many unknowns but said that when the economy picks up he thought that things were going to get back to normal in this highly desirable Town. He urged the Council to look at the landscape and stated that they had a population that had made it perfectly clear that they were not in favor of a primary property tax or secondary property tax.

Mr. McGuire interjected that the discussion was straying off of the motion that was on the floor. Mayor Schlum called for a vote on the motion. A roll call vote was taken with the following results:

Vice Mayor Archambault	Aye
Councilmember Hansen	Aye
Councilmember Contino	Aye
Councilmember Leger	Nay
Councilmember Brown	Aye
Councilmember Dickey	Nay
Mayor Schlum	Aye

The motion **CARRIED** by majority vote (5-2).

AGENDA ITEM #17 - CONSIDERATION OF APPROVING THE INSTALLATION OF TWO SPEED HUMPS IN COURTSIDE VILLAS DEVELOPMENT, ONE ON STERLING WAY AND ONE ON KINGS WAY.

Town Engineer Randy Harrell addressed the Council relative to this agenda item and advised that residents at Courtside Villas had been concerned about cut through traffic in their subdivision for several years. He advised that staff took speed and volume counts and the HOA gathered signatures (over 75% of the affected area) and in accordance with the Town's Neighborhood Traffic Policy this development did meet the criteria for speed humps. He added, however, that it did not meet the criteria for the Town to pay for the speed humps so the HOA would need to be responsible for the payment of the speed humps. He reported that Courtside Villa's HOA had indicated that they were willing to provide the necessary funding. He referred to a chart depicting the location of the speed humps on Sterling Way and Kings Way and noted that the subdivision was developed prior to the Town's incorporation. He said that there were no sidewalks so pedestrians were forced to walk out in the streets. The distance from the homes to the street curb was very short (shorter than current ordinances would allow) and cars in the driveways take up most of the difference. He informed the Council that it was a relatively high density residential area with a fair degree of cut through traffic and referred to a 90 degree bend for which drivers fail to slow down. Mr. Harrell advised that staff recommended installation of the speed humps and noted that they would work with the HOA, which had indicated they would like to contract and put them in themselves. He indicated his willingness to respond to questions from the Council.

Ms. Bender advised that there were no citizens wishing to speak on this item.

Councilmember Contino said that he noticed they were going to remove the arrow to make the left-hand turn down Sterling onto Kings Way and asked if they were going to replace it. Mr. Harrell replied that the arrow was actually a curve arrow and stated the opinion that after the speed humps were installed, traffic would slow down substantially. He added that they could move it closer to the curb itself if the Council so desired but staff did not believe it was necessary because there was other signage in place.

Councilmember Contino advised that at the corner where it went into the wash, neighbors have had cars come down and tear the pilings down and his concern was that no one knew about the curve. Mr. Harrell stated that staff could relocate the sign rather than remove it.

Mayor Schlum commented on the cut-through traffic and said that the neighbors would have to deal with the speed humps. He added that when you look at the aerial map, the only people who would be cutting through were the people who lived in that community unless people were coming through from Fountain Hills Boulevard onto Kings Way but that did not seem like a shortcut to him.

Mr. Harrell said that he was filling in for Mr. Ward and was not deeply involved in the analysis of the criteria but this was a route that people could take from Saguaro to Fountain Hills Boulevard so they could get cut-through traffic going between those two arterial streets. He added that you could also get cut-through traffic coming from a couple of multi-family complexes on Fountain Hills Boulevard that were along Kings Way.

In response to a question from the Mayor, Mr. Harrell stated that there would not be a great deal of maintenance expense for the Town -- a few signs, some striping and long term, down the road, the asphalt. He also confirmed that speed limits were posted and regular law enforcement would administer tickets if anybody speeds.

The Mayor stated that the detriment to speed humps, aside from driving over them, was the fact that law enforcement and emergency services had to slow down to get to people. He advised that Eagle Mountain had an abundance of speed humps and asked whether there were any concerns from the Fire Department regarding the speed humps.

Mr. Harrell responded that he did not know whether Mr. Ward had contacted the Fire Department or not but pointed out that there were two ways into the subdivision. He said that there was an alternate way in off of Fountain Hills Boulevard and added that the speed humps that would be installed were much less severe than the ones in Eagle Mountain.

Vice Mayor Archambault advised that he had seen some new speed humps in Mesa that accommodate the fire trucks and asked whether Mr. Harrell was familiar with the design. Mr. Harrell replied that he was familiar with the ones in Glendale (a speed cushion) and said that they had breaks in the speed humps that allow fire trucks to go through without actually going over the speed hump but they were too wide for most cars (could get one wheel through but the other would go over the speed hump). He added that staff had not really considered them because they were talking about fairly narrow roads and because there were no sidewalks they needed to hold the speed humps in from the edge.

Vice Mayor Archambault asked if staff had considered utilizing the new type of speed humps in the future and revamping the ones in place so that the Fire Department did not have an issue. Mr. Harrell advised that he was sure staff would be doing that in the future.

Councilmember Hansen **MOVED** to approve the two speed humps with funding by the Courtside Villas to be located on Sterling Way and Kings Way and Vice Mayor Archambault **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #18 – CONSIDERATION OF OPTIONS SPECIFIC TO THE UTILIZATION OF THE CONGESTION MANAGEMENT AIR QUALITY (CMAQ) AWARD AND POSSIBLE DIRECTION TO STAFF.

Town Manager Rick Davis addressed the Council relative to this agenda item and reported that staff had been very successful in their efforts to petition and acquire funding that could be utilized for a very significant roadway project on Shea. He said that the project was 95% designed and noted that staff originally applied for American Recovery & Investment funding and Stimulus funding and they were successful in being awarded a little over \$1 million that was designated for the Shea project. He stated that in addition staff had applied for surface transportation money and again were successful in acquiring money for Shea. He informed the Council that several months ago staff was notified that there were some unclaimed CMAQ funding (Air Quality Mitigation funds) that could be used for sidewalks and bike lanes and staff was again successful in doing that. He noted that it created a good situation for them in one case because they knew that they could clearly meet their obligation on Shea in adding that third lane and doing the work between Fountain Hills Boulevard and Palisades. He added, however, that at the same time they found out that they did not have a "home" for about \$671,000 worth of the ARRA money (the Stimulus money) and staff was currently looking for a home for that funding.

Mr. Davis noted that several possibilities existed and said that the most viable ones staff would like to suggest this evening. He stated that staff was not ready to make any final decision on this issue, mostly because he had not had an opportunity to talk to Public Works Director Tom Ward, and stressed the importance of his involvement in this issue. He added that he had had some discussion with the Town Engineer and Deputy Town Manager as far as some possibilities.

Mr. Davis said that discussion would take place regarding the chronology and how the funds interacted with the budget and would be expended (Julie Ghetti) and Mr. Harrell would also present some numbers. He stressed the importance of obtaining the Council's feedback so that staff would know in what direction to proceed. He discussed the success the Town had in acquiring funds and reported that the total was in excess of \$3 million for highway improvements.

Mr. Harrell addressed the Council and advised that because of the funding received, it was no longer necessary to use all of the Stimulus funds for the Shea climbing lane project. He reported that staff had developed three potential alternatives for utilizing the excess funding and noted that Stimulus funds had a very tight obligation

("ready to construct") deadline - November 30, 2009. He stated that the project needed to go through all of the normal ADOT and Federal Highway Administration channels, which was normally a three-year process. Mr. Harrell said that staff looked at three potential projects and outlined them as follows:

1) Shea Climbing Lane. Staff was planning to put a micro-surface on the lane (a very thin seal over the existing roadway). It would cover up the stripes but not much more than that. Utilizing the funds, staff could put a rubberized asphalt overlay over the entire roadway and this would give it a longer life since it had a much better wearing surface and it was also much quieter. Staff was hoping to have complete acceptance of the project within the next few days/weeks and at the next Council meeting staff anticipated bringing forward an IGA with ADOT for the funding of this project and they anticipated meeting the September 30th deadline for obligating the Federal Aid funds.

2) Shea & Saguaro Intersection. Staff had looked at this project earlier in the year and it includes not only intersection improvements but also a third lane going west on Shea as well as an overlay on Shea Boulevard east of Saguaro. Staff was preparing the plans in Federal aid format and they were currently at the 30% level. It was conceivably possible that they could split out the overlay and proceed on that. There was a big difference in that because the overlay did not touch the existing dirt, it streamlines all of the environmental regulations that eat up a lot of the time and effort in Federal aid projects. Staff might be able to get that project done in time.

3) Overlaying Saguaro Boulevard. The Council had expressed a great interest in doing this project and Saguaro really needed work done on it. At the current time, however, there was no design project underway, no consultant had been selected and no plans had been started. Staff did not see that there was any way that they could prepare the plans and get through the ADOT process within the time limitations of the ARRA funding. He explained that not only was it not "shovel-ready," it was not started.

Mr. Harrell reported that staff's thought was that the most feasible project would be to upgrade the Shea Climbing Lane to a rubberized asphalt overlay but they were seeking Council's input on how to proceed and the direction they would like staff to go in.

Mr. Davis readdressed the Council and said that this was staff's last opportunity to have the Council together to talk about this specific issue for a while and so they wanted to make sure they brought it before them as soon as possible. He said that it was pretty clear that there were a variety of roads within the community that require work but there were only a few that appeared to lend them the latitude to meet the November 30th deadline and so that had to be a very strong consideration. He added that he was not ready to conclude anything at this point in time because he would like to talk to Mr. Ward but this was a good opportunity to obtain Council feedback.

Mayor Schlum stated that the issue was a little confusing but added that the CMAQ funds were funds that another municipality, unfortunately for them, did not utilize and so they went back into a pot and the Town was smart enough to be in line to take that money to apply to a Town project. Mr. Harrell explained that other communities asked to defer their projects to next year and so the money became available.

Mayor Schlum said that the CMAQ monies had now been applied by MAG to the Town's hill climbing lane funding that they were funding out of the ARRA monies (a portion through MAG) and now an equal amount of CMAQ dollars were coming out of the ARRA monies that the Town could apply to some other project that could be obligated by November 30th. The Mayor said that they had the ARRA monies to now place somewhere else but they still had to meet the obligation date. He added that this was a good problem to have.

Mayor Schlum noted that Mr. Harrell did not talk about the sidewalk project and asked if that was already allocated (coming down Shea Boulevard below Eagle Mountain). Mr. Harrell replied that that was a 2012 project and at the current time staff had not even selected a consultant. He added that they would need to have an IGA with Scottsdale on this because a third of the project was in Scottsdale. He said that this project could not be considered at this time.

Mayor Schlum asked which projects could meet the November 30th deadline date and Mr. Harrell responded that staff was confident they could meet the date for the Shea Climbing Lane and upgrading it to a rubberized asphalt overlay. He added that they might be able to meet that date on breaking out a portion of the Shea/Saguaro improvements (an overlay on the Shea east of Saguaro). He said that that was a 70/30 MAG project; a Regional Transportation plan that the Federal government was not involved in at all.

Councilmember Dickey asked how the Town could spend the money if it was not in the budget. She also asked if the rubberized asphalt overlay was something they were going to do anyway or something they were just adding it in so that they could spend the money. She questioned what capital projects were approved and whether it was possible to use this money for what they previously discussed with Mr. Ward.

Mr. Harrell explained that the way Federal Aid projects work, they did not spend the money. He said that the only money they would actually spend was for the matching funds. He advised that staff would be presenting the Council with an IGA with ADOT at the next meeting (for CMAQ, ARRA, etc. monies). He noted that the funds go to ADOT and they bid the contract, hire the contractor, manage the construction of the project and staff would not see any of the money. They become a liaison with them but that was all.

Councilmember Dickey commented that when they did the budget and talked about the fire station and other things that they were hoping to get money for, they had to put that in the budget so that it was there and if they got the money it was there to spend. She questioned why this was different.

Ms. Ghetti addressed the Council and explained that the money that was coming in through the State (through MAG) was actually going to stay at ADOT and they would pay for the project. She added that the money that would come through for the fire station was a competitive grant so that money would be awarded to the Town and they would have to budget for it.

Mayor Schlum asked what the constraints were on the ARRA money apart from being able to obligate it by November 30th. He questioned whether there were other capital improvement projects that could be considered. Mr. Harrell replied that the ARRA funds had the same constraints that the Federal Surface Transportation Program funds had on them.

Councilmember Brown expressed the opinion that the rubberized asphalt would be a wonderful thing but for the Town's sake putting the overlay on Shea & Saguaro would be money better spent. Mayor Schlum asked whether that project would entail tearing up Saguaro as discussed when they talked about the bond and decided not to move forward. He questioned whether it would do that but a smaller piece of it.

Mr. Harrell advised that it would probably entail 15% to 20% of what would have been done had a successful bond issue gone through. Mayor Schlum asked if that was something that could be obligated by November 30th and Mr. Harrell stated the opinion that the deadline could not be met.

Vice Mayor Archambault discussed the intersection of Shea & Saguaro and redeveloping the entire area. He said he knew they had been doing some engineering work on that and other studies were conducted last year and wondered if that could meet the November 30th deadline or would the matching funds be more than enough to do that intersection.

Mr. Harrell reported that staff had just received 30% plans on the project and they were not yet to Federal aid standards and would not be able to meet the deadline.

The Vice Mayor stated that the other proposal was to do the overlay on another section of Shea Boulevard and Mr. Harrell advised that they were in the same boat on that because in an overlay they did not actually touch any dirt and they skip a lot of the environmental issues. He said that they might be able to get that project done in time.

Additional discussion ensued relative to the fact that the intersection project that was at 30% should go through within the next couple of years if the Town decides to fund the local share; the Vice Mayor's comment that based on staff's input he would go for the rubberized asphalt; Mr. Harrell's opinion that the project that had the most likelihood of meeting the deadline and moving forward was the rubberized asphalt in the Shea Climbing Lane; Councilmember Leger's comment that the rubberized asphalt would provide a better surface and would last longer while providing less noise in the corridor; the fact that Councilmember Leger had received many e-mails from people along that area that have requested rubberized asphalt and he never considered it because it was such a luxury; the fact that the Shea Corridor had the highest traffic count of any street that the Town was responsible for; Councilmember Dickey's question as to whether slurry seal required a lot of prep work and other things that the Town could do if they wanted to fix Saguaro a little bit (from Shea north) and Mr. Harrell's response that staff had not done any of the pavement analysis other than the annual study and his recollection was that a slurry seal would not hold up very long; it needed an overlay; Councilmember Hansen's question as to if the work was done on that portion of Shea now (Shea & Saguaro) and then they went back within the next two or three years and did the rest of the work, whether the work that would be done now would be torn up at all and Mr. Harrell's response that staff planed to split out the section east of Saguaro and mill and put rubberized asphalt over that and stripe it; and the fact that the downside was that because they did not have the third lane going west to the Saguaro intersection, they would still have to do something to keep the traffic out of that third lane until they could take it through the intersection.

Mayor Schlum commented that that would be kind of a "hodge podge" project. He said that he liked the idea of applying the dollars there because they already had it in their Capital Improvement Plan to do the project and utilize it there but the timing did not seem right.

Mr. Davis said that staff would want additional discussion on this issue but they wanted to get the Council's feedback this evening.

Town Attorney Andrew McGuire advised that no formal action was required this evening but they had had very conflicting discussions between MAG and ADOT with respect to the urgency with which the IGA needed to be approved. He said that at one point they thought it was by the 21st and at another point September 11th. He added that staff had no confidence in either one of those dates and might be calling the Council all together (perhaps telephonically) to have an IGA approved if MAG told them that they had a deadline shorter than the first meeting in September. He added that they might also need to make the Work Study on the 8th a Special Session.

Mr. Davis stated that staff could probably have the IGA ready a bit quicker but there were some indemnification issues that needed to be worked out; boiler plate language that kept finding its way into this type of document that Mr. McGuire had to keep reliving (i.e. holding the Town at risk in the event of anything going wrong with the project). He said that this would be okay if ADOT was the pass-through agency but with them doing the work the language did not seem to express that they were able to carry that risk. He added that the other problem had to do with funding and if somehow the Town's funding disappeared from ARRA or any other source, they were still obligated to pay those funds. He stated that Mr. McGuire had been working with the Attorney General's Office and was optimistic that they would be able to work that out and bring the IGA before the Council soon. Mayor Schlum thanked staff for their presentation.

AGENDA ITEM #19 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER. ITEMS LISTED BELOW ARE RELATED ONLY TO THE PROPRIETY OF (i) PLACING SUCH ITEMS ON A FUTURE AGENDA FOR ACTION OR (ii) DIRECTING STAFF TO CONDUCT FURTHER RESEARCH AND REPORT BACK TO THE COUNCIL:

Councilmember Dickey referred to Mr. Kloster's remarks and said that perhaps they could get some information about what the process was (i.e. they have Risk Management insurance and what happens, what were they allowed to disclose, lawsuits, other municipalities and finding ways to communicate some of the things that happen when there was a lawsuit, etc.).

Mayor Schlum said that Councilmember Leger also reminded him about the continuance information related to the development fees. He encouraged all of the Councilmembers to forward their questions to staff within the next couple of weeks to ensure a productive September meeting.

AGENDA ITEM #20 - SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE TOWN MANAGER.

Mayor Schlum stated that the Fountain Hills Downtown Visioning final session was Saturday, August 22nd, from 9:00 a.m. to 11:00 a.m. at the Fountain Hills Unified School District's Learning Center and encouraged attendance at this meeting. The Mayor also listed the upcoming events that would be taking place in the near future (Agenda Items 11, 12 and 13).

AGENDA ITEM #21 – ADJOURNMENT.

Vice Mayor Archambault **MOVED** that the Council adjourn the meeting and Councilmember Dickey **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0). The meeting adjourned at 8:40 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Mayor Jay T. Schlum

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Session held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 20th day of August 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 17th day of September 2009.

Bevelyn J. Bender, Town Clerk